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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

YEMISI AKINYEMI,

Plaintiff,

v.

MICHAEL CHERTOFF, Secretary,
Department of Homeland Security,

Defendant.

ECF Case

07 Civ. 4048 (AJP)

**DEFENDANT'S STATEMENT OF
UNDISPUTED MATERIAL FACTS
PURSUANT TO LOCAL CIVIL RULE
56.1**

LOCAL CIVIL RULE 56.1 STATEMENT OF MATERIAL FACTS

Pursuant to Local Civil Rule 56.1(a), defendant Michael Chertoff, Secretary, Department of Homeland Security (the "Government"), submits the following statement of the material facts as to which there is no genuine issue to be tried:¹

1. Plaintiff Yemisi Akinyemi ("plaintiff" or "Akinyemi") entered service as a probationary Customs and Border Protection ("CBP") officer on December 29, 2003 as part of the Federal Career Intern Program. Complaint ("Compl.") ¶ 9.

¹ The Government assumes the truth of the material facts contained herein only for the purposes of this motion.

2. The Federal Career Intern Program is a two-year probationary program. Federal Career Intern Program, Employment Agreement, at 1 (attached as Exhibit 1 to the Declaration of John D. Clopper, dated January 25, 2008 (“Clopper Decl.”)).

3. For use in her official duties, Akinyemi was provided with a uniform, a badge, and a firearm. Transcript of Deposition of Yemisi Akinyemi, taken September 12, 2007 (“Akinyemi Dep.”), at 38:20-39:24. She was also provided an “Access to Operations Area” card, also known as an “AOA card.” *See id.* Her AOA card allowed Akinyemi to access restricted areas not open to the general public. Mitchell Decl. ¶ 13.

4. On December 5, 2005, while off duty and for personal reasons, Akinyemi escorted her husband to the departure gate area of Newark Liberty International Airport (“Newark Airport”). Akinyemi accessed the departure gate area by walking around the Transportation Security Administration security screening area, through an access area reserved for persons in possession of an AOA card and conducting official business. Akinyemi was in uniform at the time, and her weapon and AOA card were visible. Akinyemi Dep. 52:6-54:11, 56:25-58:10, 72:14-73:12.

5. On December 20, 2005, Akinyemi’s employment with CBP was terminated via letter from Director of Field Operations Susan Mitchell. Akinyemi’s employment was terminated because on December 5, 2005, while she was off duty and not conducting official business, she used her position and authority to gain entrance to a restricted area of Newark Airport. *See* Letter of Termination (“Termination Letter”), dated December 20, 2005, at 1 (attached as Exhibit 3 to Clopper Decl.). By doing so, Akinyemi’s conduct on December 5, 2005 violated Section 6.3.5 of the CBP Standards of Conduct. *See id.* CBP Standard of Conduct 6.3.5 states:

Employees will not use any CBP identification in a manner which may reasonably give the perception that they are using the identification for personal benefit, attempting to exert undue influence, or to obtain, directly or indirectly, a favor, reward, or preferential treatment for themselves or others, or to improperly enhance their own image.

CBP Standards of Conduct, § 6.3.5 (attached as Exhibit 4 to Clopper Decl.).

6. Akinyemi acknowledged on December 19, 2005 that she used her AOA card to gain entrance to the departure gate area on December 5, 2005.

7. Akinyemi's employment was terminated during her two-year probationary period. Employment Agreement, at 1, Clopper Decl., Exh. 1; Termination Letter, at 1, Clopper Decl., Exh. 3.

8. Director Mitchell has never made any racially derogatory comments to Akinyemi. Akinyemi Dep. 117:24-118:2, 129:9-3.

9. Officer Patrick Murphy began working for CBP's predecessor agency in 1971. *See* Transcript of Deposition of Patrick Murphy ("Murphy Dep.") at 7:2 (relevant excerpts attached as Exhibit 5 to Clopper Decl.). Officer Murphy is not a probationary employee. *See id.*

10. While Akinyemi alleges that Officer Murphy engaged in misconduct similar to her own, Director Mitchell was not aware of Akinyemi's allegations of misconduct by Officer Murphy until they were brought to her attention during the course of this litigation, at which time she referred the matter for investigation. Mitchell Dep. 55; Mitchell Decl. ¶ 16.

11. Officer Sharmila Haq Zaman was hired by CBP as a two-year probationary employee on January 5, 2004. *See* Transcript of Deposition of Sharmila Haq Zaman ("Zaman Dep."), at 6. In April 2004, Officer Zaman inadvertently left her weapon in a non-public restroom at Newark Airport. Zaman Dep. 11-12:13. The restroom was accessible only to persons conducting official business. Zaman Dep. 13:8-14:4. The weapon was found, and a

CBP supervisor was made aware of the incident, but the supervisor did not report the incident up the chain of command to Director Mitchell. Zaman Dep. 12-24, 13:19-16:24; Mitchell Dep. 18, 55; Mitchell Decl. ¶ 17. When Director Mitchell subsequently became aware of the incident, she ordered an investigation. Mitchell Decl. ¶ 17.

12. By the time that Director Mitchell imposed discipline, Officer Zaman was a permanent, non-probationary employee. Mitchell Decl. ¶ 18.

13. Officer Elba Riley was hired by CBP as a two-year probationary employee in January 2004. *See* Transcript of Deposition of Elba Riley (“Riley Dep.”), at 8:3.

14. While Akinyemi alleges that Officer Riley engaged in misconduct similar to her own, Director Mitchell was not aware of Akinyemi’s allegations of misconduct by Officer Riley until they were brought to her attention during the course of this litigation, at which time she referred the matter for investigation. Mitchell Dep. 48:15; Mitchell Decl. ¶ 19; Akinyemi Dep.

120. Officer Riley became a non-probationary employee on or about January 11, 2006. Mitchell Decl. ¶ 20.

15. Officer Jolanta Gluba was hired by CBP on March 2002 as an Officer-in-Training, and finished her initial probationary period on March 2004. *See* Transcript of Deposition of Jolanta Gluba, taken October 31, 2007 (“Gluba Dep.”), at 5-6.

16. On January 2, 2005, Officer Gluba was interviewing an international passenger in the in-bound screening area of Newark International Airport. Gluba Dep. 7-8. During the course of the interview, Officer Gluba inadvertently allowed the passenger to see his personal information on her computer screen. *See id.* at 9-17, 45-46.

17. Officer Gluba was subsequently disciplined for the incident. She was reassigned to different work location for four and a half months. A disciplinary letter was also placed in her

file, which indicated that if any further incident occurred with a year, she would be terminated.
See id. 32-34.

18. Director Mitchell did not personally discipline Officer Gluba for the incident. Area Director Kathleen Haage-Gaynor disciplined Officer Gluba. Mitchell Dep. 40:24-41:12, 47:15-21; Mitchell Decl. ¶ 21.

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Respectfully submitted,

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